MATTER OF M-C-L-

DATE: JAN. 4, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a middle school math teacher, seeks classification as a member of the professions holding an advanced degree, and asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. *See* Section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

## I. LAW

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
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> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> > (B) Waiver of Job Offer –
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> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The record reflects that the Petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in the instant petition is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise...." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990) (IMMACT90), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

*Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner must demonstrate that his or her past record justifies projections of future benefit to the national interest. *Id.* at 219. A petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. Furthermore, eligibility for the waiver must rest with the petitioner's own qualifications rather than with the position sought. Assertions regarding the overall importance of a petitioner's area of expertise are insufficient to show eligibility for a national interest waiver. *Id.* at 220. At issue is whether the Petitioner's contributions in the field are of such significance that she merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification she seeks. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

## II. ANALYSIS

The Petitioner has established that she is a member of the professions holding an advanced degree and that her work as a teacher is in an area of substantial intrinsic merit. It remains, then, to determine whether the proposed benefits of the Petitioner's work will be national in scope and whether she will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on March 27, 2012. As evidence, the Petitioner submitted various documents, including copies of her academic credentials; letters from colleagues, students, and parents; certificates; and confirmation of additional training.

Educational degrees, occupational experience, licenses, and professional certifications, and recognition for achievements are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), (C), and (F), respectively. As the Petitioner qualifies for the classification sought as a member of the professions with an advanced degree, the issue of exceptional ability is moot. Pursuant to section 203(b)(2)(A) of the Act, foreign nationals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. *NYSDOT*, 22 I&N Dec. at 218, 222. Therefore, whether a given individual seeks classification as a foreign national of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver based on a degree of expertise significantly above that ordinarily encountered in her field of expertise. The national interest waiver is an additional benefit, separate from the classification sought, and therefore eligibility for the underlying classification does not demonstrate eligibility for the additional benefit of the waiver. For the reasons discussed below, the record confirms that she is a dedicated teacher who has pursued professional development and is highly regarded by her students, parents, and colleagues. The materials do not, however, establish that her work has or will result in significant benefits beyond her own classroom or set her apart from other competent and qualified teachers. Without evidence demonstrating that her work has affected the field as a whole, employment in a beneficial occupation such as a teacher does not, by itself, qualify the Petitioner for the national interest waiver.

On July 9, 2012, the Director issued a request for evidence (RFE). The Director acknowledged that the Petitioner is "a competent teacher whose skills and abilities are of value to her current employer," but found that she did not establish how her work "would benefit the United States on a national scale" or how "the national interest would be adversely affected by the requirement of a labor certification."

In response, the Petitioner provided information, including materials regarding the importance of mathematics and national education goals, such as articles, a transcript of Bill Gates' 2008 testimony before the Committee on Science and Technology, research papers, President George Bush's remarks on the Immigration Act of 1990, and a 2011 statement by U.S. Secretary of Education Arne Duncan. While these initiatives address the intrinsic merit of education, they do not exempt educators from *NYSDOT* or reduce its impact on them, and do not explain the impact of one teacher at the national level. The Petitioner offered no direct support that any of the above materials pertain to the adjudication of national interest waiver applications. In contrast, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. 106-95 (Nov. 12, 1999), specifically amended the Act by adding section 203(b)(2)(B)(ii) to create special waiver provisions for certain physicians. The Petitioner has not demonstrated that other legislation, including the No Child Left Behind Act of 2001 (NCLBA), Pub. L. 107-110, 115 Stat. 1425 (Jan. 8, 2002), contains a similar legislative change to the national interest waiver provision at section 203(b)(2)(B)(i) of the Act. As U.S. Citizenship

and Immigration Services (USCIS) does not have discretion to ignore binding precedent under 8 C.F.R. § 103.3(c), the Petitioner's eligibility must be determined according to the analysis set forth in *NYSDOT*.

The Director denied the petition on October 19, 2012, finding that the Petitioner had not overcome the deficiencies discussed in the RFE. On appeal, the Petitioner asserts that the Director erred by requiring the Petitioner to meet the exceptional ability standard. The decision, however, acknowledged that the Petitioner is seeking classification as an advanced degree professional and satisfies the requirements based upon her bachelor's degree plus five years of progressive experience. 8 C.F.R § 204.5(k)(3)(i).

The Petitioner also asserts that her "qualifications could not be articulated" on a labor certification and that the process does not measure "the competence, reliability, passion and effectiveness of the teacher." The inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the Petitioner still must demonstrate that she will serve the national interest to a substantially greater degree than do others in the same field. *NYSDOT*, 22 I&N Dec. at 218, n.5.

As previously stated, in the instant petition, the only issues are whether the proposed benefits of the Petitioner's work will be national in scope and whether she will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. The record does not, however, reveal that the work of one teacher significantly contributes to national educational goals, nor has the Petitioner demonstrated that her work as an individual will further those objectives on a nationally significant level. This finding is consistent with *NYSDOT*, which cited an elementary school teacher as an example of a meritorious occupation that would lack the requisite national scope to establish eligibility.

Finally, under the third prong of the *NYSDOT* analysis, a petitioner must demonstrate that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 218. Such a showing does not, as the Petitioner contends, require specific evidence of the accomplishments of other individuals in her field, nor does it require her to meet evidentiary requirements for extraordinary ability, as found at 8 C.F.R. § 204.5(h)(3). Rather, a petitioner must have a past record that "justifies projections of future benefit to the national interest" by exhibiting "some degree of influence on the field as a whole." *Id.* at 219, n. 6. In this instance, the Petitioner has submitted documentation of her work at the local level, including letters that reflect the positive impact she has had on her own students. The record does not establish, however, that she has had a broader influence within her field.

## III. CONCLUSION

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or individual of exceptional ability should be exempt from the requirement of a job offer based on national interest. For the reasons discussed above, we find the record insufficient

to confirm that either the scope of the Petitioner's proposed work or her past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification sought by the Petitioner. While a petitioner need not demonstrate notoriety on the scale of national acclaim, the national interest waiver contemplates that his or her influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217, n.3. Considering the record, the Petitioner has not established by a preponderance of the evidence that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

We will dismiss the appeal for the above stated reasons. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

**ORDER:** The appeal is dismissed.

Cite as *Matter of M-C-L-*, ID# 14956 (AAO Jan. 4, 2016)